

# CREATING EFFECTIVE VIDEO DAMAGE BROCHURES

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## INTRODUCTION

In the contemporary practice, the vast majority of cases settle without trial. Often, settlements occur after the plaintiff's deposition and discovery on the liability and medical portions of the case, but without the benefit of the testimony of other damage witnesses. This can leave a vacuum in the understanding by the defense attorneys, the defense adjusters, and even us, of the most important and human aspect of the case—the true and personal impact of the injury on our client and his family. An effective video damage brochure can fill this void and drive the payment of meaningful compensation for what otherwise is all too often just an abstraction—human beings with real pain and loss.

### KEY CHARACTERISTICS OF AN EFFECTIVE VIDEO DAMAGE BROCHURE

An effective video damage brochure:

- Brings the viewer to appreciate the client as the person they were before the injury.
- Celebrates the client's unique qualities—what makes/made him special.
- Explores the big and small pleasures the client enjoyed before the injury, and the ways in which he positively touched those around him.
- Pivots not on the specifics, but on the consequences of the injury to the client and those around her.
- Contrasts the client's life before and after the injury.
- Leaves the viewer sharing the feeling of loss.
- Makes us cry.
- Leaves the other side with a powerful and uneasy sense of what will move the jury.

## PRACTICAL POINTERS ON HOW TO PRODUCE AN EFFECTIVE VIDEO DAMAGE BROCHURE

Practically speaking, how does one produce an effective video damage brochure with these characteristics?

### **SCOPE OF THE VIDEO:**

It might seem logical to produce a video damage brochure that follows the template we all seem to use in written mediation statements. A thorough mediation statement necessarily addresses liability, medical expenses, lost wages and other economic losses, and issues of subrogation. This is all information needed by a mediator and the parties to settle a claim—and all information that should be left out of a video damage brochure.

An effective video damage brochure should focus only on communicating the human element and losses of our case. It should only contain what at trial would be admissible as evidence of the non-economic losses: physical and emotional pain and suffering and loss of function of mind or body. It should never drift from being emotive.

### **EVOKING THE STORY THROUGH GUIDED STATEMENTS:**

The story of the client, her loved ones, and the loss should come through from the mouths of the client, her loved ones, and the friends and family who can attest to that story and loss. On screen, we want to see these people talking—and feeling. We want to see them genuinely smile at a good memory and choke up on a sad reflection. We want this to occur organically, as if they were sitting at a grief support meeting in which they have finally become able to pour out their story to others who they know can truly understand what they have experienced.

We want to hear that to which they have never before given voice—that which they don't want to admit to themselves. We want the husband to share the despair and shame he feels on those mornings when he wakes to care for his paralyzed wife and wishes that God had called her home. We want the mother to share that she sometimes is angry at the “stranger” who has occupied her son's body after his brain injury. We want the friend to share that she has started making excuses to visit less because her once upbeat best pal is now always depressed.

How do we evoke these testimonials? And how do we capture them on video in a way that can be edited into an effective video damage brochure?

We use guided statements, not questions. What is a “guided statement”? A guided statement is a statement by the individual on camera that starts with a few words

or a phrase that we suggest to them. We do not *interview* our witnesses, we help them give voice to their story by proposing some starting words. In doing so, we communicate to them that it is okay to feel what they are feeling and to put those feelings into words.

Our trial lawyer brains are programmed to ask questions. Some very focused or leading (“Does your mother seem depressed now since the accident?”), some more open ended (“Tell us about your pain?”), but questions nonetheless. The problem with questions is that they lead to adjective driven responses: “Yes, she’s *very* depressed now” or “I have *severe* back pain”. These adjective driven responses do not tell the emotive story for which we are looking: “I used to wake up every morning and hear mom singing to herself in the kitchen; now I get up and find her sitting solemnly over a cup of coffee” or “When my son now asks me to go shoot hoops, I make excuses about having too much work, when the truth is that my back hurts too much to do it.”

We can elicit these non-adjective driven statements by asking the person on camera to start with a statement we give them: “Can you start with this statement about your mom, ‘I used to wake up every morning and . . .’” or “I’d like you to start your next statement with ‘When my son now asks me to go shoot hoops, I . . .’”. By giving the witness a start to a sentence that we ask her to complete, we help her to share an emotive story, rather than answer a question with sterile adjectives.

Further, by giving the on-camera witness a start to a statement, we capture on camera testimonials in which the voice of the questioner need never be heard. The removal of the questioner’s voice allows the viewer to become drawn into the story, without distraction.

## **LEARNING THE STORY IN A COMFORTABLE ENVIRONMENT:**

The stories of pain and loss we seek to evoke are very personal. We cannot expect a witness who does not feel comfortable with us and confident that we truly care to share their story. We must first develop a rapport with the witness. Some ways in which we can do that:

- Take the video statements in a familiar environment—the client’s home or that of an immediate relative, friend, or pastor.
- Have the camera equipment already in place—don’t set up equipment in front of the witness.
- Have the witnesses chair be a comfortable one (e.g., a lazy boy).
- Explain that what will be filmed will not be presented in court, but will only be confidentially shared with the other side to help them understand the loss.

- Chat with the witness. Look at photos together. Ask questions (here, beforehand) to come to learn what might drive his story about the loss.
- Dress casually—don't wear a suit!
- Make starting the cameras almost an aside: “Let me get these cameras rolling so that I don't forget later.”
- Do not have other persons in the room, excepting one assistant to unobtrusively monitor the cameras. Other witnesses generally should not be present, excepting a parent when the witness is a minor.

### **CAMERA AND MICROPHONE PLACEMENT:**

Camera placement is very important. We want to put the cameras on level with our head and that of the witness. We have found that the best placement involves the use of at least two cameras: one immediately next to us and another positioned to film the witness profile. If a third camera is available, it should be placed at approximately a 45 degree angle.

Professional lights or one or two table or free-standing lamps should be placed to soften and fill shadows on the witness's face, but should be kept as dim as possible. Modern cameras are sufficiently sensitive to allow filming to be done in dim light. We do not want the witness to feel like they are under interrogation lights. We normally draw blinds to allow the fill lights to be kept dim.

We cannot emphasize enough the importance of double-miking the witness. We normally will place two mikes on the witness, each feeding to a different camera, one mike on ourselves (for the rare occasion where we need our voice in the final product), and one mike picking up the witness from the camera (in case the other mikes fail or are picking up unwanted rustling). At the time of editing, the best audio track can be chosen.

### **INSTRUCTIONS AND HAND-SIGNALS:**

We explain to our witnesses that we will talk for a long time, but perhaps only one or two statements by the witness, or maybe none, will end up on the video. We further explain that, in order to have useable statements in the witness's voice, we will suggest a start to a sentence. We tell them there is no such thing as too long of a pause—those just get removed in editing—but too short of a pause can make it difficult to use an important statement. So, we ask our witnesses to take a few seconds to think before they repeat our starting phrase and continue on.

We also teach our witnesses one hand-signal that we use to indicate that we would like them to finish their thought and then just sit quietly so that we can capture a tail that can be used in the video. The hand motion itself is chosen to communicate calmness.

## **STORY-BOARDING AND EDITING:**

Once the video footage has been collected, the process of watching it and choosing the segments that will end up on the final video begins. We make careful time indexed notes of the powerful statements we want to include in the video. We then begin the process of creating a story board or outline, including descriptions of the visual elements that will be used. Visual elements include not only the footage of the witnesses, but also family photos or video clips.

To keep the video engaging, we like to use the “Burns effect”—named after legendary documentarian Ken Burns. The Burns effect involves the usage of still photos that slide, dissolve, or zoom in or out on the screen, all while the voice of one or more witnesses occurs in the background. For example, while a daughter who has already been introduced earlier in the video talks about the tenderness between her parents before the accident, we may see on the screen a grainy image that, as we zoom out, we can make out as two hands holding each other. As the slow zoom out occurs, we see these are the hands of the parents, sitting next to each other with smiles from a happier time.

## **THE FINISHED PRODUCT:**

In our opinion, an effective video damage brochure lasts 15 to 20 minutes and will bring tears to the eye. If you are concerned that the defense attorneys and adjuster will try to dismiss an emotional video as the work of a bleeding-heart plaintiff’s lawyer trying to tug at their heartstrings, here’s an effective preemptive approach: Before the video is shown or delivered, explain its purpose thus, “We created this video to give you a feel for the witnesses we will call so that you can assess the impact their testimony will have on the jury.” By doing so, you are effectively saying, “I know you are emotionally above all of this stuff (they’re really not), but, as a skilled litigator, you appreciate the emotional effect that this will have on a jury and the verdict they render.”

We have found that an effective video damage brochure, while time consuming to produce, pays substantial dividends in the settlement figures of a case. And, if the case does not settle, serves as a useful tool to prepare and ground the witnesses before they testify at trial.